APPEAL NO. 040338
FILED APRIL 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 20, 2004. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of _____, and that she had disability from September 5, 2002, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer erred in making each of those determinations. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease with a date of _____, and that she had disability from September 5, 2002, through the date of the hearing. The claimant had the burden of proof on the injury and disability issues and they presented questions of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the carrier noted, where, as here, the claimant is attempting to prove that she sustained a compensable occupational disease injury to her feet/ankles as a result of standing and walking on a concrete floor in steel-toed boots, she must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employers Ins. of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). The definition of "occupational disease" in Section 401.011(34) states, that term does not include ordinary diseases to which the general public is exposed outside of employment "unless that disease is an incident to a compensable injury or occupational disease." In this instance, the hearing officer specifically found that "[w]earing steel-toed boots for a twelve-hour shift, while standing or walking 75% of the time, is not an ordinary activity to which the general public is exposed to outside of employment." The evidence sufficiently supports that hearing officer determination in that regard. In addition, the claimant presented medical evidence that the claimant's activity of standing and walking in steel-toed boots at work during her 12-hour shifts aggravated the condition in her feet/ankles. In Cooper v. St. Paul Fire & Marine Ins. Co., 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.), the court held that "to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the

employee, it can reasonably be said that the resulting condition fell within the literal and plain meaning of 'injury' as defined by the 71st Legislature" and that "the legislature intended the meaning of 'injury' to include the aggravation of preexisting conditions or injuries." *See also*, Peterson v. Continental Cas. Co., 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.), (where the court held that the aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act). Nothing in our review of the record demonstrates that the hearing officer's injury and disability determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Margaret L. Turner
Appeals Judge